

YOSS LLP

700 SOUTH FEDERAL HIGHWAY, SUITE 200
BOCA RATON, FLORIDA 33432-6128
PHONE: (561) 393-5660, FAX: (561) 338-8698
WWW.ADORNO.COM

FRED A. SCHWARTZ

DIRECT LINE: (561) 620-5581
DIRECT FAX: (561) 880-6302
EMAIL: FSCHWARTZ@ADORNO.COM

November 9, 2010

The Honorable Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Kenneth Marsh
Criminal Docket No. 10 CR 480 (JBW)

Dear Judge Weinstein:

While undersigned counsel has great respect for Mr. Burlingame and the government, I am requesting that your Honor continue the bond hearing until November 12, 2010 when undersigned counsel can be there in person. Counsel believes that Mr. Burlingame is being somewhat disingenuous in his letter to the Court. Mr. Burlingame's investigation should have caused him to learn, no matter what Mr. Marsh's participation was in the rejuvenated website, and we suggest it was minimal at best, that pursuant to Your Honor's instructions on October 20, that website is now totally shut down and there is no present danger to the community.

Counsel believes that he has a professional obligation to his client to be present in a crucial hearing such as a motion to revoke bond. It is imperative that counsel be there in person. Based upon undersigned counsel's interviews, undersigned counsel believes that the implications in the factual presentation in the government's motion to revoke bond is incorrect. Since the Government would not intentionally lie to the Court, there must have been communications problems between the witnesses, the government agents and the prosecutor.

Counsel has subpoenaed two witnesses to attend the bond revocation hearing to refute the implications set forth in the government's motion. The subpoenas originally scheduled the witnesses for appearance on November 9, 2010. Based upon the email exchange yesterday between Ms. Lowe and all counsel, undersigned counsel modified those subpoenas last night by hand for appearance on November 15, 2010. First, counsel does not know, if, on such short notice, he can now compel those witnesses to appear on November 10; and second, counsel believes it is totally unprofessional for him to present live witnesses for direct and cross examination telephonically.

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Finally, as Mr. Burlingame is aware, having already disqualified one attorney who was going to work with undersigned counsel, counsel is the only practitioner of criminal law who is working on the case. For Mr. Burlingame to suggest, however flippantly, that one of the 200 attorneys in my firm attend the hearing, is similar to my suggesting that an Assistant U.S. Attorney in the Civil Division with no experience in a particular matter, attend the hearing. This type of flippancy is inappropriate for matters affecting people's freedom.

Wherefore, I respectfully request that this hearing be held on November 12th or November 15th as suggested yesterday by Ms. Lowe.

Respectfully submitted,

s/ Fred A. Schwartz

Fred A. Schwartz

FAS/hh